



HOUSE OF RUTH
MARYLAND

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TESTIMONY IN SUPPORT OF HOUSE BILL 248

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The House of Ruth is a non-profit organization providing shelter, counseling, and legal representation to victims of domestic violence throughout the State of Maryland. House Bill 248 would change the definition of “person eligible for relief” in a protective order to include anyone who alleges that s/he is a victim of a rape or a sexual offense, clarifying that they are eligible to receive a protective order rather than a peace order. **We urge the House Judiciary Committee to issue a favorable report on House Bill 248.**

To qualify for a protective order, a victim of domestic violence has to prove two things: 1) that s/he is a “person eligible for relief” (PEFR) and 2) that s/he suffered an “act of abuse.” Both of these terms are defined in the protective order statute.

Protective orders generally cover people who are in intimate or family relationships – people who are/were married, have children together, have lived together or been in an intimate relationship, or are related by blood, marriage or adoption. Protective orders also cover vulnerable adults, regardless of whether they have an intimate or familial relationship with their assailant or a more removed relationship, such as professional caregiver. A victim of violence who does not have one of these enumerated relationships cannot qualify for a protective order, but instead may qualify for a peace order. The two are mutually exclusive – the victim either has the kind of relationship with her abuser that qualifies for a protective order, or, if not, s/he qualifies for a peace order.

Although the protective order statute includes rape and sexual offenses in the definition of “act of abuse,” many victims of such acts were not eligible for a protective order because they did not have the required relationship to the abuser – married, children in common, or cohabitants for more than 90 days. For many years, domestic violence and sexual assault advocates have worked to have the protective order statute include in the definition of “person for eligible for relief” victims who were in dating relationships and victims of sexual assault. In 2015, the law changed to include victims who were in a “sexual relationship” with their abusers. While this was an important change and brought more victims under the coverage of the protective order, it has also caused confusion because there are a number of judges who believe that date rape victims do not qualify for protective orders because, while the act is “sexual,” they are not in a “relationship” with their assailants.

This differing interpretation of “sexual relationship” among the judges has led to inconsistent application of the law. Petitioners in the exact same situation receive different outcomes depending on which judge hears the case. In addition, it has caused hardship for numerous victims who, for example, would file for a protective order on the basis of a sexual assault only to be told by a judge that they did not qualify and had to file a peace order instead. This causes some victims to feel that the judges do not believe them and they end up abandoning the process. Those who persist have to re-file their paperwork, wait for law enforcement to re-serve the respondent, and return to court yet again. This causes an undue burden on victims, especially those who have limited income and cannot afford to miss work or arrange childcare to attend multiple court dates.

In 2019, House of Ruth represented a petitioner who alleged that a repair man sexually assaulted her. She originally filed for a peace order but accidentally put the wrong date for the final hearing in her calendar. When she went to court on the date she had marked in her calendar, she learned that the case had been dismissed the day before. A court clerk told her she could refile and instructed her, based on a memorandum from Chief Judge Morrissey to the District Court, to file for a protective order. The petitioner appeared before one of the judges of the District Court, who found that the petitioner was a person eligible for relief on the basis of a sexual assault and granted a temporary protective order. The petitioner appeared before a different judge for the final protective order hearing. The respondent’s attorney argued that the court should dismiss the petition because the petitioner was not a person eligible for relief as she and the respondent did not have a “relationship.” The judge postponed the hearing and asked the House of Ruth to represent the petitioner and to brief and argue the issue of whether an individual is a person eligible for relief on the basis of a sexual assault. House of Ruth and counsel for the respondent submitted written briefs and argued before the judge, who issued a 15-page written opinion denying the petitioner’s order on the basis that she was not a person eligible for relief and detailing why, in his view, the law is unclear and requires legislative clarification. The petitioner was unable at that point to refile for a peace order because the incident occurred more than 30 days prior and the peace order statute requires that the petition be filed within 30 days of the act of abuse. The petitioner left the court with no protection.

Senate Bill 210 remedies the situation described above and would clarify that a person who is a victim of rape or sexual offenses qualifies for a protective order instead of a peace order by expanding “person eligible for relief” to include victims of rape/sexual offense and removing rape/sexual offense from the list of acts of abuse under the peace order statute. This will eliminate confusion and inconsistency in the application of the law and offer greater protection to victims, such as: longer term orders; elimination of the need to show that abuse is likely to recur; and, a more robust response from law enforcement.

The House of Ruth urges the House Judiciary Committee to issue a favorable report on House Bill 248.

**HB 248/ SB 210 - Protective Orders – Relief Eligibility – Rape and Sexual Offenses
DIFFERENCES BETWEEN PROTECTIVE ORDERS AND PEACE ORDERS**

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The purpose of HB 248/ SB 210 – Protective Orders – Relief Eligibility – Rape and Sexual Offenses is to clarify that a victim of a rape or a sexual offense is eligible for a protective order rather than a peace order. The current law causes confusion for rape and sexual offense victims, who are not sure if they are in a “sexual relationship” with their assailant, and has led to inconsistent application of the law by judges. Last year, the Maryland Judicial Conference in their written testimony in support of the bill stated, “[C]urrently, there is an ambiguity as to whether such victims are eligible for relief under the protective order or peace order statute.... This bill provides the clarity needed for uniform application and affords greater measures of protections for those seeking such relief.”

Clarification on the differences between the protective order and the peace order. Some of the differences include:

Peace Orders	Protective Orders
Petitioner must apply within 30 days of the acts of abuse	No statutory time frame for when petitioner can apply relative to the act of abuse
Must prove that respondent is likely to commit an act of abuse in the future	No requirement to prove that respondent is likely to commit an act of abuse in the future
Duration of order = 6 months	Duration of order = 1 year
Temporary order can be extended for up to 30 days to effectuate service	Temporary order can be extended for up to 6 months to effectuate service
Firearms cannot be removed	Firearms are removed at final protective order and, in certain circumstances, at temporary protective order

The following other important difference exist between the peace order and protective order:

FL 4-504(d) Request of notification of service of protective order: The time after a victim of domestic violence separates from her/his abuser is often the most dangerous. It is important for victims to be able to find out as quickly as possible when their interim/temporary orders are served in order to make appropriate arrangements for their safety and to know when their orders become enforceable by law enforcement. Under the protective order statute, a petitioner may request notification when an interim or temporary protective order is served. If the petitioner requests notification, the Department of Public Safety and Correctional Services (DPSCS) must notify the

petitioner within 1 hour after law enforcement electronically notified DPSCS. This notification requirement has resulted in the creation of VINE Protective Order (VPO), which provides email or telephone notification of service of a protective order. This notification requirement, and the VPO system, do not exist for peace order cases, which means that peace order petitioners are not notified when their orders are served.

Md. Rule 9-206 Final Protective Order Hearing – Waiver of Petitioner’s Presence if Respondent Not Served: The “waiver rule” applies when a court has issued a temporary protective order that cannot proceed to a final hearing because the respondent has not been served. The waiver rule allows petitioners, after appearing for the first scheduled hearing, to have their appearance waived until the respondent is served. This saves the petitioner from having to go to court week after week to extend the temporary protective order to achieve service. The waiver rule does not apply to peace orders, which means that petitioners in peace order cases have to show up to court week after week until the order is served, or their orders will be dismissed. This is an extreme hardship for petitioners who have limited income, or limited/no access to transportation or childcare.

30 day limitation for act of abuse: Under the peace order statute, the petitioner must file for a temporary or interim peace order within 30 days of the act of abuse. If the respondent cannot be served within 30 days, the peace order must be dismissed and the petitioner is not eligible to re-file because more than 30 days will have elapsed between the incident of abuse and the time she is able to re-file. This leaves peace order petitioners without protection unless a new act of abuse occurs. Many abusers, after the expiration of an unserved peace order, will avoid committing “an act of abuse” that would give rise to a new peace order, but continue to engage in other actions that are harassing or intimidating to the victim, but the victim is without recourse.

Entry into METERS: Protective orders are entered into METERS. This gives law enforcement the ability to look up the orders in a database. Peace orders are not entered into a statewide database. This means that law enforcement does not have the ability to look up the order. The only way for law enforcement to access a peace order is to look in a local database or call the county district court or Sheriff’s office. If a peace order petitioner calls law enforcement to enforce her/his order, but does not have a paper copy of the order, police will not have ready ability to look up the order, making enforcement of the order more difficult. For example, if a college student who has a peace order against a classmate returns to find him/her outside of her/his dorm, but s/he does not have a copy of her/his peace order, police will not be able to arrest him/her if they cannot obtain a copy of the order. Because the peace order is not in METERS, they will have difficulty verifying the order, especially if the courts are closed. (Major Tapp Harper, Baltimore City Sheriff’s Office, 410.396.1155)

Entry in National Crime Information Center (NCIC), national criminal database: Protective orders are entered in the national criminal database. This enables law enforcement officers anywhere in the country to look up protective orders and give them full faith and credit, as required by federal law. This means that if a victim of abuse obtained a protective order in Maryland and then travels or moves to Pennsylvania, law enforcement in Pennsylvania can look up the petitioner’s protective order and enforce it

or arrest the respondent for violations. Peace orders are not entered into the national criminal database (or even Maryland databases, as noted above), and therefore law enforcement cannot look up a peace order to find out its terms and enforce the order unless the petitioner has a physical copy of the order. This slows the pace of response and diminishes protections for victims. (Sheriff Darren Popkin, Montgomery Co. 240.777.7043)